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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------|
| 09/977,036 | 10/11/2001 | Paul Wingert | 671.003US1 | 3735 |
| 21186 | 7590 | 05/16/2005 | | |
| SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938 | | | | |
| | | | EXAMINER TRUONG, THANH K | |
| | | | ART UNIT 3721 | PAPER NUMBER |

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 09/977,036 | Applicant(s) WINGERT, PAUL | |
| | Examiner Thanh K Truong | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 19-24, 27-35 and 37-48 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) 5-7, 33, 44 and 47 is/are allowed.
 6) ☒ Claim(s) 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 18, 2005 has been entered.

Applicant's cancellation of claims 8-18, 25, 26 and 36 is acknowledged.

2. Due to the typographical error, the examiner inadvertently stated that the last office action (November 1, 2004) was in response to the Applicant's amendment received on October 5, 2004. The correct date should have been August 23, 2004.

3. After carefully reviewed the record of the present application, the examiner discovers the new matter in the amended claims, first appeared in the amendment filed May 6, 2003, and thus the following 112's rejection:

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The amended claims 19, 37 and 41 recites "a secondary compression mechanism located above the primary compression mechanism ... to push feed away from above the primary compression mechanism ... during operation of the primary compression mechanism" (emphasis added). There is no support in the original specification for this claimed feature.

In the specification of the present application, page 13, lines 20-25:

*"In some embodiments, piston 901 is activated for an approximately 1-second compression cycle that occurs once every 10 seconds. Thus, primary compression mechanism 130 is filling the volume in back of piston 901 for approximately 9 seconds, then piston 901 is extended into tunnel 250 for less than about one second and then withdrawn, leaving space for more feed to be deposited by primary compression mechanism **250 130**."*
(Amended May 6, 2003).

The paragraph above describes the alternating compression cycle between the primary compression mechanism and the secondary compression mechanism, that is, the primary compression mechanism 130 is operated for approximately 9 seconds, and then the secondary compression mechanism is operated for less than about one second. This paragraph does not explicitly or implicitly express that the secondary

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compression mechanism operates during the operation of the primary compression mechanism.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As discussed above in paragraph 5 of this office action, there is no support in the original specification for the feature claimed in the amended claims 19, 37 and 41. Therefore the feature recited in the claims: "a secondary compression mechanism located above the primary compression mechanism ... to push feed away from above the primary compression mechanism ... during operation of the primary compression mechanism" (emphasis added) rendering the functional language in the claims indefinite, and thus is not being given any patentable weight.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 19, 21, 22, 24,27-35, 37, 38, 41, 45, 46 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen et al. (4,310,036).

Rasmussen discloses an agricultural bagger apparatus comprising: a primary compression mechanism including shaft 52 and teeth 46; an input hopper 50 that receives agricultural feed, the hopper having a sloping wall 70 and lower end exit chute; a tunnel 32 and a means (secondary compression mechanism 82) located above the primary compression mechanism for displacing pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior.

The secondary compression mechanism 82 including: the motorized pistons 88; hinged 83 apparatus on one side of the feed tunnel wall and connected to the piston arm 89, and the secondary compression mechanism compacts the feed above the primary compression mechanism by adding pressure to the feed.

Rasmussen further discloses means 62 for: displacing pressure along the sloping wall toward the primary compression mechanism in order for the feed to easily fall through the hopper to the primary compression mechanism (column 3, lines 54-62); for sweeping the feed along the sloping wall in a cervical motion; for agitating the feed at a circumference of the cervical motion at a distance from the sloping wall; and for sweeping the feed along the sloping wall in a first and second separated cervical motion; and the motorized piston are periodically activated for a compression cycle and then withdrawn, leaving space for more feed to deposited by primary compression mechanism (column 5, lines 22-32).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goar (3,881,407).

As discussed above in paragraph 3 of this office action, Rasmussen discloses the claimed invention, except for the secondary compression mechanism is located on the exterior of the feed tunnel and extending into the feed tunnel.

Goar discloses (figures 6-8) a compression mechanism 50 includes a hinged apparatus that protrudes outward of the feed tunnel wall at the noncompacting stage and extending inward into the feed tunnel at the compacting stage, the compression mechanism 50 provides a means to push and compacting the material further into the chamber before the material being discharge into a container. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen apparatus by locating the secondary compression mechanism on the exterior of the feed tunnel and extending into the feed tunnel as taught by Goar to eject and compact the material from the chamber into the storage container (column 2, lines 51-53).

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12. Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036).

As discussed above in paragraph 9 of this office action, Rasmussen discloses the claimed invention, except that the motorized pistons are periodically activated as described in claims 39 and 42.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to periodically activated the motorize pistons as cited in claims 39 and 42 to achieve the result desired, thus improving the productivity, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

13. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 9 of this office action, Rasmussen discloses the claimed invention, except that the first motor is coupled to the wall of the input hopper.

Goth discloses an apparatus comprising a motor 16 is coupling to a wall of a hopper to keep the material in motion by loosening and preventing the material from adhering to each other inside the hopper (column 1, lines 28-31 and lines 47-48).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen first distribution

mechanism by applying the teaching from Goth to couple the motor, for driving the distribution mechanism, to the sloping wall of the input hopper for loosening and keeping the material in motion before feeding to the primary compression mechanism.

The modified Rasmussen further discloses: an elongated first bar 13 attached along its length to the first motor, and the first bar forms a non-parallel angle 14 relative to a radius of rotation of the first bar.

The plane of the first bar is substantially parallel to the surface on which it is coupling to, therefore in the modified Rasmussen the plane of the first bar would be parallel to the sloping wall and an axis of rotation the first motor would be perpendicular to the sloping wall, and a first distribution mechanism driven in a cervical motion having both up and down components 13, 14, 15 adjacent to the sloping wall in order to prevent feed bridging before the primary compression mechanism.

14. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 13 of this office action, the modified Rasmussen discloses the claimed invention, except for a second motor coupled to the sloping wall of the input hopper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to install a second motor coupled to the sloping wall of the input hopper, since it has been held that mere duplication of the essential working parts of a

device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Allowable Subject Matter

15. Claims 5-7, 33, 44 and 47 are allowed.
16. Claim 40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

17. Applicant's arguments filed April 18, 2005 have been fully considered but they are not persuasive.
18. In light of the 112's rejection in this office action, Applicant's arguments with respect to claims 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 have been considered but are moot in view of the new matter raises in paragraphs 4-7 above in this office action.

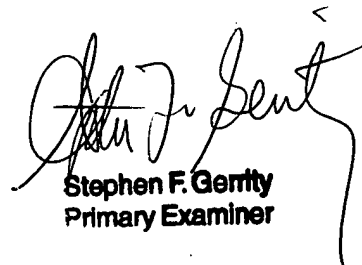
Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tkt
May 9, 2005.



Stephen F. Gerrity
Primary Examiner